



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 210427-0092]**

**RTID 0648-XX069**

### **Fisheries of the Northeastern United States; Atlantic Spiny Dogfish Fishery; Revised 2021 and Projected 2022 Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final revised specifications for the 2021 Atlantic spiny dogfish fishery, and projected specifications for fishing year 2022, based on the Mid-Atlantic Fishery Management Council's updated risk policy, as recommended by the Mid-Atlantic and New England Fishery Management Councils. This action is necessary to establish allowable harvest levels to prevent overfishing while enabling optimum yield, using the best scientific information available, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Spiny Dogfish Fishery Management Plan. This rule also informs the public of these revised fishery specifications for the 2021 fishing year.

**DATES:** Effective on May 1, 2021.

**ADDRESSES:** The Mid-Atlantic Fishery Management Council prepared a Supplemental Information Report (SIR) for these specifications that describes the action and any changes from the original environmental assessment (EA) and analyses for this revised 2021 and 2022 specifications action. Copies of the SIR, original EA, and other supporting documents for this action, are available upon request from Dr. Christopher M. Moore,

Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <https://www.mafmc.org/supporting-documents>.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Ferrio, Fishery Policy Analyst, (978) 281-9180.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council jointly manage the Atlantic Spiny Dogfish Fishery Management Plan (FMP), with the Mid-Atlantic Council acting as the administrative lead.

Additionally, the Atlantic States Marine Fisheries Commission manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The FMP requires the specification of an annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL). These limits and other management measures may be set for up to five fishing years at a time, with each fishing year running from May 1 through April 30. This action implements revised specifications for the 2021 spiny dogfish fishery, based on the Mid-Atlantic Council's updated Risk Policy, and projects maintaining these specifications for fishing year 2022.

Specifications were already projected for the 2021 spiny dogfish fishery as a part of a multi-year specifications action for 2019-2021, based on a 2018 assessment update. Under those initial specifications, the commercial quota would increase 18 percent from fishing year 2020. However, the Mid-Atlantic Council recently updated its risk policy to accept a higher level of risk for stocks at or above biomass targets (85 FR 81152; December 15, 2020), and the Councils recommended that the projected acceptable biological catch (ABC) and resulting commercial quota for the 2021 spiny dogfish fishing year be recalculated using this new approach. Applying the new risk policy

increases the 2021 ABC 9 percent from what was initially projected (24 percent above 2020), and raises the 2021 commercial quota 8 percent (27 percent above 2020). The Councils also recommended projecting unchanged specifications for fishing year 2022, as there is a research track stock assessment scheduled for spiny dogfish in 2022, and there will be little additional or new data prior to the assessment to inform specifications prior to that fishing year.

The proposed rule for this action published in the **Federal Register** on March 4, 2021 (86 FR 12591), and comments were accepted through March 19, 2021. NMFS received one comment from the public, and no changes were made to the final rule as a result of the comment (see **Comments and Responses** for additional detail). Additional background information regarding the development of these specifications was provided in the proposed rule and is not repeated here.

### **Final Specifications**

This action implements the Councils' recommendations for final 2021 and projected 2022 spiny dogfish specifications to maintain compliance with the Mid-Atlantic Council's updated risk policy (Table 1), as outlined in the proposed rule. Although catch limits were already projected to increase in 2021 compared to fishing year 2020, this final revised commercial quota is 8-percent higher than it would have been before applying the new risk policy. Specifications for fishing year 2022 are projected to be unchanged from these revised 2021 limits.

**Table 1 – Summary of Final 2021 and Projected 2022 Spiny Dogfish Specifications**

	2021-2022 Specifications	
	Million pounds	Metric tons
ABC	38.58	17,498
ACL = ACT	38.48	17,453
TAL	29.68	13,461
Commercial Quota	29.56	13,408

This action does not change any other fishery management measures, including

the 6,000-lb Federal trip limit and restriction of one landed trip per calendar day, leaving them unchanged for fishing years 2021 and 2022. By providing projected specifications for 2022, NMFS hopes to assist fishery participants in planning ahead. The Councils will review these projected 2022 specifications to determine if any changes need to be made prior to their final implementation. Changes may occur if quota overages trigger accountability measures, or if new stock information results in changes to the ABC recommendations. NMFS will publish a notice prior to the 2022 fishing year to confirm the projected quotas as final or announce any necessary changes. NMFS expects the 2022 stock assessment to inform development of the next set of specifications beginning in fishing year 2023.

### **Comments and Responses**

The public comment period for the proposed rule ended on March 19, 2021, and NMFS received one comment from the public. The commenter stated that the proposed increase in quota is foolhardy, and suggested that dogfish quotas should instead be cut by 50 percent. The commenter presented no rationale or evidence to support these claims. These specifications were developed using the best scientific information available and recent fishery behavior, and incorporates an allowable level of risk according to the Mid-Atlantic Council's risk policy. No changes to the proposed specifications were made as a result of the comment.

### **Changes from the Proposed Rule**

There are no changes from the proposed rule.

### **Classification**

Pursuant to section 304(b)(3) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Administrator, Greater Atlantic Region, has determined that these specifications are necessary for the conservation and management of the Atlantic spiny dogfish fishery, and that it is consistent with the

Atlantic Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This action relieves a restriction by increasing annual quota catch limits in the spiny dogfish fishery, and is therefore not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). This final rule increases all catch specifications from the ABC to the coastwide commercial quota from what was initially planned to go into effect in fishing year 2021 by 8 and 9 percent, respectively; and 24 and 27 percent, respectively, compared to 2020 specifications. These increases are intended to provide additional flexibility and economic opportunity for the spiny dogfish fishing industry. The 2021 fishing year begins on May 1, 2021. If the 30-day delayed effectiveness period postpones the implementation of these measures beyond the May 1 start of the fishing year, the lower and unnecessarily restrictive initially projected 2021 catch limits will roll over into the beginning of 2021. This would be contrary to the public interest as it could create confusion and potential economic harm to the spiny dogfish fishery through lost opportunity under the lower catch limits at the beginning of the fishing year. Furthermore, this action does not require any additional time to come into compliance with this rule. Unlike actions that require an adjustment period, spiny dogfish fishing vessels will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Therefore, NMFS also finds good cause not to delay this final rule's effectiveness, consistent with 5 U.S.C. 553(d)(3); and to implement these specifications on May 1, 2021, for the 2021 fishing year.

This final rule is exempt from review under Executive Order 12866 because the action contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed

rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none was prepared.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action contains no information collection requirements under the Paperwork Reduction Act of 1995.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 28, 2021.

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Samuel D. Rauch III,  
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National Marine Fisheries Service.

[FR Doc. 2021-09288 Filed: 4/29/2021 4:15 pm; Publication Date: 5/4/2021]